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Counterclaim Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALMONT AMBULATORY
SURGERY CENTER, LLC, *et al.*,
Plaintiffs,

vs.

UNITEDHEALTHGROUP, INC., *et al.*,
Defendants.

UNITED HEALTHCARE SERVICES,
INC., *et al.*,

Counter-Plaintiffs,

vs.

ALMONT SURGERY CENTER, LLC,
et al.,
Counter-Defendants.

CASE NO. 2:14-cv-03053-MWF
(VBKx)
Magistrate Judge: Hon. Victor B.
Kenton

DISCOVERY MATTER

**DECLARATION OF PETER J.
BRACHMAN I/S/O
SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
COUNTERCLAIM DEFENDANTS'
MOTION TO QUASH THIRD
PARTY SUBPOENAS**

Hearing

Date: Tuesday, December 12, 2014

Time: 10:00 a.m.

Courtroom: 590 (Roybal Courthouse)

Discovery Cutoff: None Set

Pretrial Conference Date: None Set

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DECLARATION OF PETER J. BRACHMAN

I, PETER J. BRACHMAN, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I make this declaration in support of the Counterclaim Defendants' Supplemental Briefing in support of their Motion To Quash United's third party subpoenas. I am an attorney with the law firm of Hooper, Lundy & Bookman, P.C. The facts stated herein are personally known to me, and if called as a witness I could and would competently testify to them.

2. On August 6, 2014, I and my colleague Daron L. Toohey (who is lead counsel for Plaintiffs in this case) attended a meeting with United's counsel in my firm's Los Angeles offices. I attended the meeting to substitute for my colleague Eric Chan, who was on vacation at the time. Attorneys Stephen Lucke, R.J. Zayed, and Bryan Westerfeld attended in person on behalf of United. Various other attorneys for United were present on the telephone.

3. Contrary to what is stated in the Declaration of Kirsten Schubert in Support of United's Opposition to the Motion to Quash, my colleague, Eric D. Chan was not present at the meeting. Mr. Chan was on vacation in Europe at the time the meeting occurred, as noted above.

4. Ms. Schubert did not attend the August 6, 2014 meeting in person, nor do I recall her stating that she was present on the phone. Consistent with this, Ms. Schubert's declaration does not indicate that she attended the meeting in person or by telephone.

5. The primary purpose of the August 6, 2014 meeting was to initiate a Rule 26(f) conference in this case. Among other topics, we discussed United's intent to withdraw its Counterclaim and to file an amended version.

6. During the meeting, Mr. Zayed repeatedly emphasized that the parties' discussion that day was intended to "kick off" the parties' Rule 26(f) conference. He stressed that the parties could not complete the Rule 26(f) conference in one

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1 sitting, and that the parties' discussion of the relevant issues would have to be
2 ongoing. In my opinion, Mr. Zayed went out of his way to make this point.

3 7. During the meeting, the parties did not complete a comprehensive
4 discovery plan, as is required by Rule 26(f)(2). Likewise, they did not discuss
5 issues regarding the preservation of discoverable information at that time, another
6 requirement of Rule 26(f)(2). Rather, they discussed proposals relating to limited
7 aspects of discovery, such as the sampling of claims. No agreement was reached as
8 to those proposals.

9 8. At no point in time did counsel for United inform us that they intended
10 to file a completed Rule 26(f) report within 14 days of our August 6, 2014 meeting.
11 That would have been inconsistent with Mr. Zayed's repeated representations that
12 the 26(f) conference was not completed at the August 6 meeting.

13 9. In fact, to my knowledge, United's counsel did not circulate a draft
14 Rule 26(f) report until September 9, 2014, over a month later. The draft contained
15 blanks reflecting areas where Plaintiffs / Counterclaim Defendants' input was still
16 required.

17 10. In addition, to my recollection, at no time during the August 6, 2014
18 meeting did United's counsel inform me or Mr. Tooch that they intended to
19 subpoena numerous third parties, or that they would seek to subpoena all records
20 relating to twenty-one Wells Fargo bank accounts. To my knowledge, our firm did
21 not become aware of United's subpoenas until October 10, 2014, when United
22 served a formal notice that it intended to serve them.

23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct.

25 Executed November 25, 2014, at Los Angeles, California.

26
27 
28 PETER J. BRACHMAN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

On November 26, 2014, I served true copies of the following document(s) described as **DECLARATION OF PETER J. BRACHMAN I/S/O SUPPLEMENTAL MEMORANDUM IN SUPPORT OF COUNTERCLAIM DEFENDANTS' MOTION TO QUASH THIRD PARTY SUBPOENAS**

on the interested parties in this action as follows:

See Attached Service List

☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 26, 2014, at Los Angeles, California.

/s/Pamila Chand